



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 05126-99

18 November 1999

SSG [REDACTED] IC

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 9 August 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board found the letter of 14 May 1998 releasing you from a legal hold status, enclosure (2) to your application, did not exonerate you of any wrongdoing. They were unable to find either the contested Standard Addendum Page or fitness report contained any factually inaccurate information. They were likewise unable to find you had the wrong reporting senior for the fitness report for 1 to 22 January 1998. Finally, while they found you are correct that this adverse report should have been referred to you before the reviewing officer added his comments, they concluded that your not having submitted a rebuttal made this a harmless error.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5126-99

IN REPLY REFER TO:
1610
MMER/PERB
AUG 9 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] SMC

Ref: (a) SSgt [REDACTED] BD Form 149 of 21 Sep 98
(b) MCO P1610.7D w/Ch 1-4

Encl: (1) Completed Fitness Report 970507 to 971231 (AN)

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 6 January 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 970507 to 971231 (AN)
- b. Report B - 980101 to 980122 (DC)

Reference (b) is the performance evaluation directive governing submission of both reports.

2. The petitioner contends that both reports are inaccurate and unjust and disclaims the recorded derogatory information. With specific regard to Report A, the petitioner argues that the Senior Marine Representative [REDACTED], added adverse comments without affording him (the petitioner) an opportunity to respond. Concerning Report B, the petitioner indicates that Major [REDACTED] was never in his reporting chain; nor was he ever informed that [REDACTED] would not be his correct Reporting Senior. To support his appeal, the petitioner furnishes his own detailed statement, a copy of a report of a Commander's Inquiry of Pending Investigation for Misconduct, a copy of a letter releasing him from legal hold, a copy of a letter regarding financial accountability, and advocacy letters from Gunnery Sergeant Hood and [REDACTED].

3. In its proceedings, the PERB concluded that:

- a. The petitioner is correct concerning the comments made by [REDACTED] in Report A. Owing to the relative recency of the report at the time the PERB first considered reference (a) (approximately a year), the Board concluded that referral at that

(3) P5-A-B

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time would be appropriate. All such action, to include adjudication by the Adverse Sighting Officer (Colonel [REDACTED]) has been completed. In this regard, the Board notes that Colonel [REDACTED] has dispelled any perception that the report is neither an accurate nor fair evaluation of the petitioner's performance and characteristics during the stated period. His belief to the contrary, as well as the documentation furnished with reference (a), fail to cast any doubt as to the objectivity or truthfulness of the overall appraisal.

b. Report B is both administratively correct and procedurally complete as written and filed. The Board observes that the petitioner was given ample opportunity to officially respond to the adverse nature of the report when it was prepared. For whatever reason he failed to avail himself of that right, it is he who must now accept ultimate responsibility for his inaction. Succinctly stated, it is the Board's position that the appeal system is not a substitute for proper resolution of an adverse fitness report at the time it is prepared. That fact notwithstanding, and as with Report A, the Board finds nothing substantive to prove the evaluation contained within Report B is neither accurate nor fair.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A (as reflected in the enclosure), and Report B should remain a part of Staff Sergeant [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]
D. C. CHRISTIANSEN
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps